

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE DIRECTOR

> February 3, 1989 AO-89-05

Lawrence H. Gallagher
Vice Chairman
Wellfleet Finance Committee
P. O. Box 1055
Wellfleet, Massachusetts 02667

Dear Mr. Gallagher:

This letter is in response to your request for an advisory opinion concerning the application of the provisions of M.G.L. c.55 to certain activities of the Wellfleet Town Finance Committee (the "Committee").

You have stated that at the annual town meeting last April the voters of Wellfleet overwhelmingly approved the town's operating and capital budgets and many additional articles on the warrant. You have further indicated that since the total expenditures would force the town to levy a tax of more than 2 1/2 percent as compared to the previous year, many articles as well as \$80,000 worth of the town's operating budget were on the override ballot in the fall. Because six months had passed since the town meeting election, the Committee wished to inform the voters about the override questions appearing on the ballot. The Committee did not take steps to provide such written information at that time, but in the future would like to provide information and make recommendations to the voters as to override questions appearing on the ballot.

Specifically, you have asked whether the Committee may legally print, mail and otherwise distribute to the voters a brochure containing information about override questions together with the recommendations of the Committee. We have addressed your question by posing a series of questions and answers, which we hope will address your concerns.

1. Are reports and recommendations made by finance committees such as the Committee considered to have been made in order to influence or affect the vote on any question submitted to the voters of the commonwealth and therefore subject to the provisions of M.G.L. c.55?

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It is the opinion of this office that "questions submitted to voters" (as such phrase is used in section 1 of M.G.L. c.55) must appear on the ballot in order for the provisions of M.G.L. c.55 to apply. This office does not consider issues which are debated in an open forum such as a town meeting, even if such issues are resolved by secret vote, to be questions "on the ballot". Therefore, for example, any materials published and disseminated by a finance committee before and in anticipation of a town meeting solely to inform the voters prior to such meeting will not be considered to have been so published and disseminated for the purpose of "influencing or affecting the vote on any question submitted to the voters", even if such materials advocate a "yes" or "no" vote on a topic at such meeting.

It is the opinion of this office that if such materials are printed and distributed in contemplation of a ballot election, however, the provisions of M.G.L. c.55 are fully applicable if such materials advocate opposition to or support of one or more questions appearing on such ballot.

2. What provisions of M.G.L. c.55 are applicable to the Committee if it expends funds in order to influence or affect the vote on a question submitted to the voters on the ballot?

Section 22A of M.G.L. c.55 states:

The treasurer of any city, town, or other governmental unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters of the commonwealth shall file reports with the director setting forth the amount or value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute, together with the date, purpose, and full name and address of the person to whom it was made.

The treasurer of any city, town, or other governmental unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any other question submitted to the voters of any city or town or any part of any city or town, shall file reports with the clerk of such city or town setting forth the amount of value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute, together with the date, purpose, and full name and address of the person to whom it was made.

It is the opinion of this office, therefore, that if the Committee expends municipal funds in order to promote or

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oppose a question submitted to the voters on a town ballot (rather than at a town meeting), the treasurer of the Committee or of the town of Wellfleet, as the case may be, must file a campaign finance report (Form CPF M10) with the town clerk. (If such expenditure pertains to a question on the state ballot, the report must be filed with this office.)

3. Are there other campaign finance law issues of which the Committee should be aware?

In <u>Anderson v. City of Boston</u>, 380 N.E. 2d 628 (Mass., 1978), the Supreme Judicial Court addressed the question of whether municipalities have the authority to appropriate and expend funds for the purpose of engaging in any activity designed to influence the results of a referendum question without specific statutory authority to so act. The Court concluded that any right the City of Boston had to appropriate funds for its general corporate purposes was pre-empted by M.G.L. c.55 with respect to the appropriation of funds to be expended to oppose or support a question appearing on the state ballot.

The <u>Anderson</u> suit was instituted by ten taxpayers pursuant to section 43 of M.G.L. c.40 in an effort to prevent the illegal appropriation and expenditure of such funds. A similar suit might be initiated against the Committee, or its individual members, if it were to make an expenditure opposing or promoting a question submitted to the voters.

4. May individual members of a finance committee promote or oppose questions submitted to the voters?

M.G.L. c.55 deals only with campaign finance activity and does not purport to regulate other activity, such as individual speech. Most of this type of activity is protected by the First Amendment, although if there is individual benefit to be gained by using an individual's official position, such individual may wish to consult with the State Ethics Commission.

If individual members of the Committee wished to participate in campaign finance activity in their capacities as private citizens, e.g. establishing a political committee to raise and spend monies for a political purpose, M.G.L. c.55 would be applicable.

In summary, it is the opinion of this office that if the Committee were to expend municipal funds in order to promote or oppose an issue presented to the voters on a town ballot, the treasurer of the Committee, or the town treasurer of Wellfleet, as applicable, must file a campaign finance report with the town clerk disclosing such activity.

In addition, we would note that the Anderson decision

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cited above indicates that there are inherent risks in municipal officials expending appropriated monies for political purposes and we would advise you to seek the advice of town counsel if you believe there is specific statutory authority for such an expenditure. Barring such explicit statutory authority, we would suggest that no expenditure of appropriated monies be made in order to support or oppose a ballot question.

The opinions contained herein have been rendered solely on the representations made in your letter and solely in the context of the provisions of M.G.L. c.55, and offer no advice as to other statutes or regulations.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,

Many F. McTigue

Director

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